

Number SR-FINRA-2012-053 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2012-053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2012-053, and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-30106 Filed 12-12-12; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68384; File No. SR-ISE-2012-94]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Payment for Order Flow Fees**

December 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The ISE proposes to amend its payment for order flow fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

##### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange currently has a payment for order flow ("PFOF") program that helps its market makers establish PFOF arrangements with an

Electronic Access Member ("EAM") in exchange for that EAM routing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each Priority Customer contract they execute in the symbols that are subject to the PFOF fee.<sup>3</sup> Specifically, ISE currently charges a PFOF fee of \$0.65 per contract for options classes that are not in the penny pilot program. For penny pilot classes that are not subject to the Exchange's maker/taker fees, the Exchange currently charges a PFOF fee of \$0.25 per contract.

The Exchange now proposes to increase the PFOF fee applicable to classes that are not in the penny pilot program from \$0.65 per contract to \$0.70 per contract. The Exchange is not proposing any change to the PFOF fee charged to penny pilot classes that are not subject to the Exchange's maker/taker fees. With this proposed rule change, ISE's PFOF fee in classes that are not in the penny pilot program will be more competitive with the PFOF fee charged by at least one other options exchange in these options classes.<sup>4</sup> This proposed rule change will also allow ISE market makers to compete better for order flow in these options classes.

As noted above, the PFOF fee is collected by the Exchange for each Priority Customer contract executed in the symbols where PFOF fees are collected. For the sake of clarity, the Exchange proposes to add rule text to its Schedule of Fees to note that the PFOF fee applies to market makers for each Priority Customer contract executed. Aside from adding the proposed clarifying text to its Schedule of Fees, the Exchange is not amending its PFOF program in any other respect.

The Exchange has designated this proposal to be operative on December 3, 2012.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation

<sup>3</sup> PFOF fees do not apply to market makers for each Regular Priority Customer contract executed in Select Symbols. PFOF fees are waived for Singly Listed Symbols, FX Options, Flash Orders and for Complex Orders in all symbols. See Schedule of Fees, Section IV, D.

<sup>4</sup> NASDAQ OMX PHLX LLC ("PHLX") currently charges a payment for order flow fee of \$0.70 per contract for options classes that are not in the penny pilot program. See PHLX Pricing Schedule, Section II, Payment for Order Flow Fees.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The proposed rule change will allow the Exchange and its market makers to better compete for order flow since the Exchange will now collect the same amount of fee as PHLX in options classes that are subject to the PFOF fee. The Exchange believes that with this proposed rule change, market makers will have greater incentive to trade on ISE in the symbols that are subject to the PFOF fee and thus enhance competition.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2012-94 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2012-94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2012-94 and should be submitted by January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-30104 Filed 12-12-12; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68386; File No. SR-FINRA-2009-060]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment Nos. 1 and 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books)**

December 7, 2012.

#### **I. Introduction**

On September 10, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to amend FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books). The proposed rule change was published for comment in the **Federal Register** on October 22, 2009.<sup>3</sup> The Commission received seven comment letters on the proposed rule change.<sup>4</sup> On December 22, 2009, FINRA filed a letter with the Commission responding to these comments,<sup>5</sup> and on

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Act Release No. 60836 (Oct. 16, 2009), 74 FR 54614 (Oct. 22, 2009) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2009-060) ("Notice").

<sup>4</sup> See letters from BTUD, to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (the "BTUD Letter"); Frederick T. Greene, CIMA, Senior V.P., Portfolio Manager, Woodforest Financial Services, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated October 29, 2009 (the "Woodforest Letter"); Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group, LLC, to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (the "NPB Letter"); Dale E. Brown, CAE, President & CEO, Financial Services Institute, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 4, 2009 (the "FSI Letter"); Bari Havlik, Chief Compliance Officer, Charles Schwab & Co., Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2009 (the "Schwab Letter"); Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2009 (the "Wells Fargo Letter"); and Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated December 16, 2009 (the "SIFMA Letter"). These letters are available on the SEC's Web site at <http://www.sec.gov/comments/sr-finra-2009-060/finra2009060.shtml>.

<sup>5</sup> See letter from Stan Macel, Assistant General Counsel, Regulatory Policy and Oversight, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated

Continued

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).